

## Office of General Counsel

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The General Counsel's Office is a small legal office. Like most legal offices, we'll get all sorts of questions on all sorts of issues, some of them not your run-of-the-mill regulatory matters. We've looked into auto accidents in government cars; whether the enforcement unit of the old ICC could, under the 4<sup>th</sup> Amendment, stop trucks, break the seals, and inspect cargo; and just about anything else that would come before any other full-service legal counsel.

But most of our time is devoted to two principal missions. One of our major roles is in performing what we call defensibility assessments in cases that might be going to court. Although there's no hard and fast rule, for most of the cases our main job is not writing decisions. But what we do a lot of before a case goes to the Board is worry . . . . . mostly about how something will play when it gets out of the Board. So we'll meet with other staff to discuss cases before drafts are done. We'll look over a lot of the drafts that are done. Sometimes we'll suggest some general ideas, or some very specific changes. And in some cases we'll be on the teams that put together the major decisions. Obviously defensibility assessments are very important, because when an agency puts out good decisions, people are less likely to go to court at all, and if they do, we're more likely to win.

Our other major role is to defend the agency's decisions in court. Unlike most Federal agencies, the Board, like the ICC before it, has independent litigating authority under what's known as the Hobbs Act. When our decisions are challenged in the courts of appeals, we are a statutory respondent (defendant), which means that we have a right to defend ourselves in our own names. We work with the Department of Justice, which is also a statutory respondent in STB cases, and we're almost always on the same side, but unlike a lot of agencies, we brief and argue our own cases, and that of course is why we know a lot of you out there.

As many of you know, when you're our partners, we're very collaborative when working on our briefs. We'll discuss strategy, share ideas, and coordinate which party will emphasize what issues. And so when you're with us, please be open and try things out on us. Of course, you have to understand that our interests aren't always identical to yours, and so we may not be able to do exactly what you want us to do. But whatever's on your mind, give it a try, and we'll do our best to work with you.

And by the way, if you're on the other side, please feel free to also discuss your legal strategy with us early on. We may not be as receptive to your legal advice if you're our opponent, but even so, we will be trustworthy, helpful, friendly, courteous, kind, cheerful, and so forth, and as far as legal adversaries go, we're pretty easy to get along with. So we look forward to working with you and, when it can't be helped, we look forward to working against you.

Another area in which we have some responsibility is responding to the duty day call. A new attorney in the private sector will learn where to call to find out information, that is, how to

get some free legal advice. Back in the old days at the ICC, we actually rotated the younger attorneys so that, for a day at a time, one of them would take all of these duty day calls. Sometimes they'd be tied up a half a day with the calls. Although we're a lot smaller now, we still get calls from attorneys in the private sector looking for information on how things work. We respond when we can, but if it's going to be too much of a project, or if we'd have to do a lot of research ourselves, we refer the calls up to Dan King's folks, who are very capable and handle dozens of calls every day.

And the last thing we get involved with is the "please intervene on my side" call or letter. Sometimes lawyers will call or write to us seeking to enlist the agency in some cause they are pursuing before a court: intervention, amicus, something like that. We'll listen, and we'll do our own research and assessment, and we'll respond with our reactions, and ultimately, if you ask, we'll put the matter before the Board. But it's always the Board's call, not ours, and so convincing us is not the same thing as convincing the Board. And one more thing: people sometimes use the government, and so in this kind of a matter, be fair to us and be open, and don't try to sell us a bill of goods. We know that there are two sides to every story, and if our office, or the agency, feels we're being misled, we don't react in a favorable way.

We have 9-1/2 lawyers in our office, the half being Tom Stilling, who does rate work for us but who also works for the Office of Economics. Ellen Hanson, Craig Keats, along with Tom Stilling, Evelyn Kitay and Cecelia Cannizzarro, have all been long-time government lawyers. We picked up in the recent free agent market Jamie Rennert, Rachel Campbell, and Ray Atkins from private practice, where I'm sure a lot of you have run across them. And we were lucky enough to get Alice Saylor a few years ago after a long and distinguished career in the railroad industry, mostly with the short lines. And finally, Marilyn Levitt taught school, raised a family, was a town manager, and then went to law school before joining us about 5 years ago.